

Talking Points Concerning FCC Fact Sheet

- The FCC has said, repeatedly, that the cost of site commissions cannot be passed on to consumers.
- The FCC's Fact Sheet proposes to increase the applicable ICS caps by amounts which approximate average demonstrated costs incurred by facilities in making ICS available to inmates.
- The Fact Sheet suggests a path forward that could facilitate lasting ICS reform by making clear in the order that:
 - 1) A per-minute fee, not to exceed the additive specified in the Fact Sheet, may be remitted to facilities to recover costs incurred in making ICS available.**
 - 2) Any amounts paid by providers to facilities in excess of the additive is either prohibited or presumptively an unreasonable practice under Section 201(b) of the Act.**
- These clarifications will enhance welfare and serve the public interest by helping to align the interests of facilities with consumers as facilities will seek to maximize revenue recovery by forcing providers to compete based on lowering rates to consumers.
- The FCC has a well-established history of regulating contractual arrangements entered into by regulated entities that have a detrimental impact on the public interest. Here, the FCC has made extensive findings, based on a robust record, of a connection between site commissions and the problems the Commission seeks to address in the proceeding.
- Applying a presumption, if providers wish to pay monies to facilities in excess of the amounts authorized, they should be prepared to demonstrate, at their own risk, that the amounts are being paid from profits and not borne by consumers.
- Permitting the additive to be remitted to facilities adds much needed clarity to the FCC's regulations. If the additive is not reserved for potential facility compensation, how does a provider show that the cost of commission is not included in the rate? The FCC has not articulated any methodology for allocating costs to a particular facility and the payment of any commission entails regulatory and litigation risk for providers and facilities.
- This is not an assertion of authority over confinement facilities, but rather it is an extension of actions the FCC has already taken to reduce site commissions. The FCC has stated that commissions cannot be recovered from consumers, and has adopted rate caps to constrain the funds available to pay site commissions, so the FCC has already take regulatory action impacting revenues to facilities.
- Without clarity in this area the FCC has created enormous uncertainty over what and what cannot be paid to facilities. Uncertainty deters investment and breeds litigation. Both providers and facilities crave certainty.